IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 500 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIMSING @ RAMSING PARAGSING - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR NK MAJMUDAR appointed by Legal Aid Committee for Appellant
MR KT DAVE ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date :01/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. The appellant ('the accused' for short) along with another accused, Kishanbhai Laljibhai Chavda, who is not before this Court, were tried by the learned Presiding Officer, Fast Track Court, Nadiad, in Special (NDPS) Case No.4 of 2001 for commission of the offence punishable under Section 17 of the Narcotic Drugs & Psychotropic Substances Act, 1985 ('the NDPS Act' for short) arraigned on the charge of the accused having been found with contraband article 'opium' weighing 4 Kg. 720 grams and another accused, Kishanbhai Laljibhai Chavda, having been found with contraband article 'opium' weighing 12 grams, without pass or permit, when they were intercepted and apprehended near four junction road, Nainpur, by P.W.6, Pratapsinh Udesinh Raul, Police Inspector, LCB, and other police personnel, during watch and blockade for effective implementation of prohibition. At the end of the trial, the accused and Kishanbhai Laljibhai Chavda were found guilty of the offence with which they were charged and as their complicity is proved, the trial court convicted

both of them vide judgment and order dated 5.4.2002 and sentenced the accused to suffer R.I. for ten years and fine of Rs.1 lakh and in default of payment of fine, R.I. for further period of one year whereas another accused, Kishanbhai Laljibhai Chavda, is ordered to suffer R.I. for six months and fine of Rs.2,000/- and in default of payment of fine, R.I. for further period of two months.

2. Aggrieved by the aforesaid judgment and order of conviction and sentence, the accused has filed this appeal under Section 374 of the Code of Criminal Procedure ('the Code' for short).

3. Briefly stated, the prosecution case as disclosed from the FIR and unfolded during trial, is as under:

3.1. On 4.7.2001, Pratapsinh Udesinh Raul, Police Inspector and other police personnel were on duty at Nainpur Cross Roads where they arranged a blockade for effective implementation

of prohibition and were keeping a watch on the road. At that time the accused and another accused Kishanbhai were found coming from village Nainpur. The accused had a bag in his hand. On seeing the police, both these persons hesitated to come forward and turned back, which raised suspicion in the minds of the police personnel and, therefore, they were intercepted. P.W.6, Pratapsinh Raul, noticed that something was there in the bag which was in the hand of the accused. Immediately two panchas were called for carrying out search on the person of the accused. Name and address of the accused was asked. The accused was also asked as to what was in the bag to which he replied that it was opium. Pratapsinh Udesinh Raul introduced himself and other police personnel to both the accused and told them that he wants to search their person and if they wish to be searched in presence of a gazetted officer or a magistrate, he would make necessary arrangement for the same but the accused did not opt for the same and told that P.W.6 may search them and, therefore, P.W.6, Pratapsinh searched

their person and during the search, opium was recovered from four plastic bags in a cloth bag carried by him. The name and address of another accused Kishanbhai was also asked and he was also searched by P.W.6, Pratapsinh Udesinh Raul, as he also did not opt to be searched in presence of a gazetted officer or a magistrate. On search, a currency note of Rs.20 denomination and a plastic bag were found from the left side pocket of his shirt. There was also another plastic bag containing opium in liquid form. As opium is a contraband substance, both the accused were asked to show the permit or pass for carrying opium, which they could not produce and, therefore, the opium was taken to a nearby shop for weighing and on weighing, it was found that the accused was carrying 4 Kg. 720 grams of opium in the bag whereas another accused Kishanbhai was carrying 12 grams of opium in a small plastic bag. An officer from the FSL was called for making preliminary examination to ascertain as to whether the substance recovered from the accused was opium or not and on preliminary examination

it was found to be opium. A sample was taken from the opium which was recovered from the accused and placed it in a tin box and sealed after due procedures. The opium recovered from another accused Kishanbhai was also placed in a tin box and sealed after due procedures. A panchnama was prepared narrating the procedures followed before the panchas.

3.2. A complaint in respect of the aforesaid incident was filed against the accused and another accused Kishanbhai by P.W.6, Pratapsinh Udesinh Raul, before LCB, Kheda where it was registered by Kishanbhai Manibhai, P.S.O. which is on record at Ex.22. On filing of the complaint, investigation was handed over to P.W.7, Ramsinh Fulsinh Dabhi, PSI, Mehmedabad Police Station, Ex.29.

3.3. On taking over the investigation by P.W.7, RF Dabhi, PSI, he received the muddamal, recorded the statements of the witnesses, obtained necessary permission from his higher

official to send the muddamal to FSL for chemical analysis and handed over the muddamal to P.W.5, Ravjibhai Ishwarbhai, Ex.19, to deliver it at the FSL for analysis and on receipt of the report from FSL certifying that the muddamal sent for chemical analysis was opium, P.W.7, RF Dabhi, filed charge-sheet against the accused and another accused Kishanbhai for commission of the offences punishable under sections 17 and 29 of the NDPS Act in the Sessions Court (Special Court) Kheda at Nadiad.

3.4. The learned Presiding Officer and Fast Track Court, Nadiad to whom the case was made over for trial, framed charge against the accused which was read over and explained to them. As the accused and another accused Kishanbhai pleaded not guilty to the charge and claimed to be tried, they were put to trial in Special (NDPS) Case No.4 of 2001.

3.5. To prove the culpability of the accused, the prosecution has examined and relied upon the

oral testimonies of seven witnesses, the details of which are given in para 6 of the impugned judgment and order. They are as under:

P.W. No.	Name	Ex. No.	Page No.
1	Rameshbhai Dhulabhai Patel, panch witness	10	103-110
2	Chhotabhai Chandabhai Dabhi, Panch witness	13	121-128
3	Prakashbhai Mafatbhai Patel, shopkeeper	17	135-138
4	Kishanbhai Manibhai, Head constable	18	139-142
5	Ravjibhai Ishwarbhai, Police constable	19	143-144
6	Pratapsinh Udesinh Raul, PI, LCB	21	147-158
7	Ramsinh Fulsinh Dabhi, I.O.	29	187-192

3.6. To prove the case against the accused, the prosecution has also produced a number of documents, details of which are mentioned in para 6 of the impugned judgment and order. They are as under:

Sr. No.	Description	Ex. No.	Page No.
1.	Panchnama	11	113-118
2.	Complaint	22	159-164
3.	Letter written by PU Raul for filing complaint	23	165-168
4.	Receipt issued with regard to recovery of muddamal from the accused	24	169-170
5.	Letter written by P.U. Raul to DSP	25	171-172
6.	Letter written by the officer of FSL	26	173-176
7.	Letter written to FSL for analysis of muddamal	27	177-180
8.	Receipt regarding receiving of muddamal at FSL for analysis	28	181-186
9.	Covering letter written regarding receipt of FSL report	20	145-146
10.	Letter from FSL	32	201-210
11.	Letter from FSL	33	211-212
12.	Letter from FSL	34	213-214

3.7. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused the circumstances appearing against them in the evidence of the

prosecution witnesses and recorded their further statement under Section 313 of the Code. In their further statement they denied the case of the prosecution in toto. The accused has further stated that Pratapsinh Raul took him from the four junction saying that he shall be paid Rs.1500/- per month and also food and clothes and made him to sit in the police custody saying that he would be released the next day. Thereafter he filed a false case. However, the accused neither led any evidence nor did they examine any witness to support their defence.

3.8. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution, the trial court held that the prosecution has established, beyond reasonable doubt, that on 4.7.2001 the accused was found with contraband article 'opium' weighing 4 Kgs. 720 grams, and another accused Kishanbhai was found with contraband article 'opium' weighing 12 grams, without pass or permit, when they were intercepted and apprehended at the cross roads of

Nainpur, by P.W.6, Pratapsinh Udesinh Raul, PI, LCB and as they were found guilty of the offences with which they were charged, the trial court convicted them vide judgment and order dated 5.4.2002 for commission of the offence punishable under Section 17 of the NDPS Act and accordingly imposed sentence on them to which reference is made in earlier paragraph of this judgment, which has given rise to instant appeal at the instance of original accused No.1 only whereas accused No.2 has not chosen to file appeal against the impugned judgment and order and, therefore, in this appeal, we have to examine the case of original accused No.1 only.

4. Mr. N.K. Majmudar, learned advocate appointed by the Legal Aid Committee for the accused, has contended that the prosecution has examined the police personnel who have not followed the mandatory and statutory provisions contained under the NDPS Act and, therefore, on account of non-compliance of the provisions of NDPS Act, the prosecution evidence cannot be

relied upon and cannot be acted upon. It is also contended by him that the prosecution has failed to establish the fact that the muddamal contraband article reached the FSL intact and there was possibility of tampering with the muddamal on its journey from the time of seizure and filing of the complaint till it reached to the FSL. According to Mr. Majmudar, there is non-compliance of the provisions of section 50 of the NDPS Act. The trial court has erred in holding that the muddamal opium was properly and legally handled and it was not tampered with till it reached at FSL in sealed intact condition. On the aforesaid premises, it is submitted by him that the prosecution has failed to establish the charge levelled against the accused beyond reasonable doubt and, therefore, the impugned judgment and order of conviction and sentence deserves to be quashed and set aside by allowing this appeal and thereby acquitting the accused of the offence with which he was charged. He, therefore, urged to allow the appeal.

5. In counter submission, Mr. KT Dave, learned APP, has submitted that by voluminous evidence produced by the prosecution, the complicity of the accused is proved beyond reasonable doubt. The accused was found and caught red-handed with contraband article opium when he was intercepted by P.W.6, Pratapsinh Udesinh Raul, Ex.21 and other police personnel. He has also submitted that after following and observing the mandatory and statutory provisions contained under the NDPS Act, the contraband article was seized and sealed in presence of the police personnel as well as panchas. It is also submitted by him that the report of FSL in terms certified that the contraband article which was sent for analysis was opium. It is asserted by him that the prosecution has successfully established that the sample sent to FSL was not tampered with during the course of its journey from the stage of seizure and filing of the complaint till reaching at FSL. On the aforesaid premises, according to Mr. Dave, learned APP, the prosecution has established the

case against the accused beyond reasonable doubt and, therefore, the trial court has rightly recorded the order of conviction and sentence. He further submitted that the impugned judgment and order does not call for any interference of this court in this appeal and as the appeal lacks merit, it deserves to be dismissed. He, therefore, urged to dismiss the appeal.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of the caution sounded by the Supreme court while dealing with NDPS cases, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused

and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

7. At the outset, be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder.

8. In this connection, it would be appropriate to refer to the observations made by the Supreme Court in the case of Bharatbhai Bhagwanjibhai v. State of Gujarat, AIR 2003 SC 7. In para 1 of the said judgment, the Supreme Court has observed as under:

“The Statement of Objects and Reasons of the NDPS Act categorically records the inadequacy of the existing legislation to combat illicit drug traffic and drug abuse, both at the national and international levels and it is by reason of such deficiencies in the existing laws, the legislature thought it prudent to consolidate the same and bring about a comprehensive legislation so as to meet the exigencies of the situation. A plain look at the provisions of the NDPS Act read with the Statement of Objects and the Preamble would depict the intent of legislature as regards the offences under the said consolidated legislation, which stands expressed in rather explicit language as one of the most heinous ones in nature. This Court, however, in consonance with criminal jurisprudence of the country has been insisting on strict compliance of the safeguards provided under the statute so as to be in tune therewith”.

9. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Supreme Court in the above referred to judgment, we have to find out as to whether in instant case strict compliance of the safeguards provided under the statute have been observed by the Police Inspector during the course of search of the accused and seizure of the muddamal, contraband article, opium.

10. In this connection, we shall first refer to the testimony of P.W.6, Pratapsinh Udesinh Raul, P.I. LCB, Ex.21, at pages 147-158 of the paper book. P.W.6, Pratapsinh Udesinh Raul, PI, has, inter alia, testified that on 4.7.2001, he and other police personnel were on duty at Nainpur Cross Roads where they arranged a blockade for effective implementation of prohibition and were keeping a watch on the road. At that time the accused and another accused Kishanbhai were found coming from village

Nainpur. The accused had a bag in his hand. On seeing the police, both these persons hesitated to come forward and turned back which raised suspicion in the minds of the police personnel and therefore they were intercepted. He noticed that something was there in the bag which was in the hand of the accused. Immediately two panchas were called for carrying out search on the person of the accused. Name and address of the accused was asked. The accused was also asked as to what was in the beg to which he replied that it was opium. Thereafter he introduced himself and other police personnel to both the accused and told them that he wants to search their person and if they wish to be searched in presence of a gazetted officer or a magistrate, he would make necessary arrangement for the same and as the accused did not opt for the same, he made search and found four plastic bags in a cloth bag carried by the accused from which opium in liquid form was recovered. The name and address of another accused Kishanbhai was asked and he was also searched by him, as he also did not opt

to be searched in presence of a gazetted officer or a magistrate. On search, a currency note of Rs.20 denomination and a plastic bag were found from the left side pocket of his shirt. There was also another plastic bag containing opium in liquid form. As opium is a contraband substance, both the accused were asked to show the permit or pass for carrying opium, which they could not produce and, therefore, the opium was taken to a nearby shop for weighing and on weighing it was found that the accused was carrying 4 Kg. 720 grams of opium in the bag whereas another accused Kishanbhai was carrying 12 grams of opium in a small plastic bag. An officer from the FSL was called for making preliminary examination to ascertain as to whether the substance recovered from the accused was opium or not and on preliminary examination it was found to be opium. A sample was taken from the opium which was recovered from the accused and placed it in a tin box and sealed after due procedures. The opium recovered from another accused Kishanbhai was also placed in a tin box and sealed after due

procedures. A panchnama was prepared narrating the procedures followed before the panchas. A complaint in respect of the aforesaid incident was filed against the accused and another accused Kishanbhai by him before LCB, Kheda where it was registered by Kishanbhai Manibhai, P.S.O., which is on record at Ex.22. In short, he has deposed as per the complaint lodged by him, which is on record at Ex.22, at pages 159-164 of the paper book. A perusal of the complaint at Ex.22, shows that oral testimony of the complainant gets corroboration from the complaint and there is no contradiction between the complaint and the oral testimony of P.W.6, Pratapsinh Udesinh Raul. It is also mentioned in the complaint about the strict compliance of the provisions of Section 50 of the NDPS Act. It may be noted that P.W.6, PU Raul, was cross-examined by the learned advocate for the accused and a lot of suggestions were made with regard to non-compliance of the statutory and mandatory provisions contained under the NDPS Act. However, he repelled all such suggestions and he stuck to the statement that

all the statutory and mandatory provisions of the NDPS Act as required were followed. This witness has successfully withstood the test of cross-examination and nothing substantial has been brought out during his cross-examination which would impeach his credibility.

11. The prosecution has thereafter examined and relied upon the evidence of P.W.4, Kishanbhai Manibhai, a Head Constable, Ex.18, at pages 139-142 of the paper book. It may be appreciated that this witness has inter alia testified that on 4.7.2001 he was PSO of Mehmedabad Police station. At that time P.W.6, Pratapsinh Udesinh Raul, PI, LCB, lodged complaint before him on behalf of the State of Gujarat against the accused for commission of the offences under the NDPS Act. This witness has thereafter entrusted the muddamal to P.W.7, Ramsinh Fulsinh Dabhi, Investigating Officer, Ex.29. He has also testified that he has issued the muddamal receipt and made necessary entries in this regard in the

station diary. He has testified that he received the muddamal in sealed intact condition.

12. The prosecution has thereafter examined and relied upon the oral testimony of P.W.5, Ravjibhai Ishwarbhai, a police constable, Ex.19, at pages 143-144 of the paper book. He has inter alia testified that he had handed over the muddamal, which was entrusted to him, at FSL, Ahmedabad on 6.7.2001, personally.

13. The prosecution has thereafter examined and relied upon the oral testimony of P.W.7, Ramsinh Fulsinh Dabhi, PSI, investigating officer, Ex.29, at pages 187-192 of the paper book. He has inter alia testified that he had sent the muddamal to FSL for analysis.

14. All the above mentioned witnesses i.e., P.W.Nos. 4, 5 and 7, were cross-examined by the learned advocate for the accused but nothing substantial has been brought out from their

cross-examination which would impeach their credibility. These witnesses withstood the test of cross-examination and stuck to the same version with regard to the role played by them at the time of interception, seizure and sealing of the muddamal and sending the muddamal to FSL and nothing substantial has been brought out from their cross-examination which would impeach their credibility.

15. The prosecution has thereafter examined P.W.1, Rameshbhai Dhulabhai Patel, Ex.10, at pages 103-110 of the paper book and P.W.2, Chhotabhai Chandabhai Dabhi, Ex.13, at pages 121-128 of the paper book. They are panch witnesses. They have inter alia testified that the panchnama was prepared in their presence. Both of them have testified that they were called by the police and, therefore, they remained present as panchas to the panchnama when the accused were caught red-handed with contraband article opium and they have stated that in their presence muddamal

article opium was recovered from the accused. Both these panch witnesses have during their cross-examination stated that in their presence P.W.6, Pratapsinh Udesinh Raul, had given option to the accused as to whether they would like to be searched in presence of a gazetted officer or a magistrate or they would like him to search them and the accused opted that P.W.6 himself may search them and, therefore, P.W.6 searched the accused and hence from the evidence of both these panch witnesses it is clear that the mandatory and statutory provision contained under section 50 of the NDPS Act have been duly complied with and adhered to and the said aspect has been reflected in the panchnama Ex.11, at pages 113-118 of the paper book.

15.1. Both these witnesses were cross-examined by the learned advocate for the accused but nothing substantial could be brought out to impeach the credibility of their testimonies.

16. The prosecution has thereafter examined and relied upon the oral testimony of P.W.3, Prakash Mafatbhai Patel, a shopkeeper, Ex.17, at pages 135-138 of the paper book. He has inter alia testified that he is running a retail shop in the name and style of Vahanvati Traders. He has also stated that on 4.7.2001 police personnel and two panchas came to his shop for weighing muddamal. He has further stated that he weighed the muddamal and one packet was weighing 4 Kg. 720 grams and another packet was weighing 12 grams. He has however denied that the accused were also brought to his shop and stated that they were sitting in a hotel. This witness has been declared hostile and thereafter he was cross-examined. Though this witness has not fully supported the prosecution case, from his evidence it is clear that the police had gone to his shop with panchas for weighing the muddamal and he weighed the muddamal and the weight of the muddamal was also as per the weight shown in the panchnama and other evidence on record in the form of oral testimonies of other witnesses.

Therefore, evidence of this witness also corroborates the evidence of other witnesses.

17. It may be appreciated that this is a chance recovery and not a case of recovery on receipt of prior information. P.W.6, Pratapsinh Udesinh Raul, PI, LCB and other police personnel, during their duty, by chance, found the accused with contraband article opium which was recovered from them after following the procedures. Therefore, in instant case, there is no question of following provisions of section 42 or 43 of the NDPS Act.

18. So far as compliance of mandatory provisions of Section 50 of the NDPS Act is concerned, the evidence is consistent and voluminous. P.W.6, Pratapsinh Udesinh Raul and other witnesses have stated the accused was caught red-handed with opium. At that time P.W.6, Pratapsinh Udesinh Raul had asked them whether they wanted to be searched in presence of

a gazetted officer or a magistrate and if they wanted to be searched in presence of a gazetted officer or magistrate he will make necessary arrangement for the same but the accused did not opt for the same and asked P.W.6 that he may search them and, therefore, P.W.6 searched the accused persons and recovered the muddamal. This search was carried out in presence of other police personnel as well as panchas. The panchas have also supported the aspect that the accused were given option by P.W.6 to be searched in presence of a gazetted officer or a magistrate but they did not opt for the same and therefore P.W.6 searched the accused persons and in the panchnama also the same thing is mentioned. Therefore, it is duly proved that the provisions of Section 50 of the NDPS Act have been duly complied with and adhered to.

19. So far as the journey of the muddamal from the stage of interception of the accused, search of the person of the accused, seizure and

sealing of opium till it reached FSL has also been duly proved and all the witnesses, in this regard, are consistent. As per the said evidence, the muddamal was not tampered with at any stage and it reached the FSL intact in sealed condition. The procedure for sealing was done as per the practice adopted by the police in NDPS cases. FSL reports Ex.32,33 and 34, at pages 201-210, 211-212 and 213-214 respectively, clearly show that the seal on the packet containing the muddamal was intact. Thus, it is clear that the muddamal was received by FSL intact in sealed condition and on analysis, the muddamal was found to be opium. Therefore, during journey of the muddamal from seizure and sealing till it reached FSL for analysis there was no question of tampering with the said muddamal.

20. Independently this court has also perused the documents which are mentioned in paragraph 6 of the impugned judgment and from the perusal of the same it is clear that P.W.6, Pratapsinh Udesinh Raul, has strictly followed the mandatory

and statutory provisions contained under the NDPS Act and no discrepancy could be noticed by this court on the part of P.W.6, Pratapsinh Udesinh Raul, with regard to compliance of the provisions of NDPS Act.

21. On overall view of the matter, according to this Court, the mandatory and statutory provisions contained under section 50 of the NDPS Act have been adhered to and complied with by P.W.6, Pratapsinh Udesinh Raul, and it is duly proved by the evidence of other prosecution witnesses. P.W.6, Pratapsinh Udesinh Raul, had taken utmost care and caution while seizing and sealing the said contraband article. The apprehension of tampering with the muddamal can be ruled out as from the stage of recovery of the muddamal till its reaching the FSL, proper care and caution was taken by the police personnel. It is on the contrary clearly proved that it was in the safe hands of police personnel and it reached at FSL intact in sealed condition for chemical analysis.

22. In view of the aforesaid evidence, there is no manner of doubt that when the accused was intercepted, apprehended and searched, he was found in possession of contraband article opium. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained under the NDPS Act were followed and the samples were sent to FSL after following the procedures under the NDPS Act.

23. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

24. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the trial court is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of form.

25. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

26. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeal lacks merit,

deserves to be dismissed. However, while dismissing the appeal, we deem it just and proper to modify the sentence imposed on the accused. According to us, in default of payment of fine of Rs.1 lakh, if the accused is ordered to undergo R.I. for six months instead of R.I. for one year, it would meet the ends of justice.

27. For the foregoing reasons, the appeal fails and accordingly it is dismissed. While maintaining and confirming the impugned judgment and order of conviction and sentence imposed on the accused, in default of payment of fine of Rs.1 lakh, we hereby order that the accused shall undergo R.I. for six months instead of R.I. for one year. The appeal stands dismissed accordingly with the above modification.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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